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WHEN ETHICAL PRINCIPLES AND FEMINIST JURISPRUDENCE COLLIDE: AN UNORTHODOX READING OF “A JURY OF HER PEERS”

SARA D. SCHOTLAND*

In *A Jury of Her Peers*,¹ two women uncover evidence related to a crime that the sheriff and the local prosecutor are investigating, a farmwife's murder of her husband.² While sitting in the kitchen of the farmhouse, the two women discover clues that point to a history of psychological abuse that led Minnie Wright to strangle her husband. The women discover the apparent motive for Minnie's crime when they come across the dead body of Minnie's canary with its neck snapped. The story takes place at a time, 1917, when an all-male jury would have tried Minnie. Acting as a mini-jury of Minnie's gender peers, the two women conceal the dead canary—evidence that would provide the prosecution with a motive needed to assure conviction.

To date, critics have approved the action taken by Mrs. Peters and Mrs. Hale as a constructive solution to avoid injustice from the patriarchal legal regime, which at that time excluded women from jury service. The two women display a superior ability to de-code the narrative of Minnie Wright's life. As Marina Angel observes:

The women in Susan Glaspell's story see different evidence than the men in the story. They perceive and reason from the mundane facts of an abused woman's daily life, from “trifles,” to conclude that she killed her abusive husband. They then act as “a jury of her peers” to make an actual trial difficult, if not impossible, by destroying the evidence that would convict her of murder.

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¹ SUSAN GLASPELL, *A Jury of Her Peers*, in *LIFTED MASKS AND OTHER WORKS* 279, (Eric S. Rabkin ed., 1993).

² *Id.* at 283.

The women in the story start from different facts and reach different moral and legal conclusions than the men in the story.³

This consensus reading that emphasizes feminine insightfulness fits with an obvious message of the text, a protest against exclusion of women from jury service. Glaspell critiques the unfairness of denying to a woman a trial by a jury of her peers who could better appreciate the suffering she has endured.

In this essay, I read Glaspell's tale against the grain. I argue that the action of Mrs. Peters and Mrs. Hale in concealing evidence relevant to the investigation represents an outright obstruction of justice. It is important to avoid a one-sided approach that overlooks, even whitewashes, the question of the morality of the decision taken by the women to tamper with the evidence and block Minnie Wright's prosecution. While feminist critics focus on the silencing of Minnie Wright throughout her oppressive marriage, I argue that it is equally important to imagine John Wright's unspoken narrative: the story of a life and death that may go untold as a result of suppression of evidence. The "whitewash interpretation" does an injustice to the text by ignoring the ambiguity and complexity inherent in this story. Rather than ignore the difficult question of the morality of destroying evidence, we should engage—as Glaspell invites—in thoughtful exploration of the ethical issues raised by the two women's conduct.

In Part I of this article, I provide a brief summary of *A Jury of Her Peers*. In Part II, I discuss the widespread approval in the scholarship to date of the action taken by Mrs. Peters and Mrs. Hale. In Part III, I examine the legal and moral dimensions of the crime of destruction of evidence. In Part IV, I place the conventional reading of Glaspell's story within the context of leading schools of feminist jurisprudence. I argue that despite its brevity, the story invites readers to examine a conflict of values: on the one hand, principles of feminism and fair play lead us to applaud actions taken to liberate Minnie Wright from the unfair, even immoral judicial system; on the other hand, what of the morality of the women's actions in suppressing evidence and circumventing the legal process?

Given that *Jury* is so frequently taught in Law and Literature curricula in law schools,⁴ we should not miss the opportunity to evaluate the ethics of the women's actions—and the text invites such evaluation.

³ Marina Angel, *Susan Glaspell's Trifles and A Jury of Her Peers: Woman Abuse in a Literary and Legal Context*, 45 BUFF. L. REV. 779, 781 (1997).

⁴ See Elizabeth Villiers Gemmette, *Law and Literature: Joining the Class Action*, 29 VAL. U. L. REV. 665, 686 (1995). *A Jury of Her Peers* is ranked in the top ten of the most widely assigned works in the law and literature curriculum. *Id.*

I. THE PLOT OF THE STORY, AND THE HISTORICAL CASE ON WHICH “A JURY OF HER PEERS” IS BASED

Minnie Wright is an emotionally abused wife who has been jailed for murdering her husband. Minnie and John Wright lived in isolation in a “lonesome-looking” farmhouse on a “lonesome stretch of” road.⁵ John Wright’s body was discovered by Lewis Hale, who went to inquire whether the tight-fisted farmer would share the expense of a telephone, one of the few windows of communication in the isolated community. Wright has the reputation of being “close,” but not a bad man.⁶ The sheriff and the prosecutor search the Wrights’ residence for clues that may assist in conviction, since without a motive conviction is not certain.⁷ When Lewis Hale attempts to tell the county attorney more than the mere facts of his discovery of the corpse, explaining that, “I didn’t know as what his wife wanted made much difference to John [.]”⁸ the county attorney cuts him off. Right away we see that the prosecutor is flawed. He commits the cardinal error of interrupting a witness who could have shed light on the motive for the crime. Mrs. Peters and Mrs. Hale accompany Sheriff Peters and the prosecutor to the farmhouse to retrieve Minnie’s clothes that will be brought to her in jail where she is detained pending trial. The two women remain in the kitchen while the men search the house. After all, as Mr. Hale dismissively comments: “[W]ould the women know a clue if they did come upon it?”⁹

In fact, it is the women who are perceptive enough to uncover a series of clues that permit them to knit together a narrative about the dire circumstances of the Wrights’ marriage and the precipitating factor that led her to kill. The women realize the quiet desperation of Minnie Wright’s life: the lack of a phone; a bad stove that makes cooking impossible¹⁰ and is metonymic with the coldness of the farmhouse; Minnie’s shabby clothes.¹¹ The women observe that Minnie Wright left her kitchen with dirty towels and tasks half completed.¹² Examining Minnie’s unfinished quilt, the women wonder out loud whether “she was going to quilt it or just

⁵ GLASPELL, *supra* note 1, at 283.

⁶ *Id.* at 291.

⁷ *Id.* at 304.

⁸ *Id.* at 283.

⁹ *Id.* at 309.

¹⁰ *Id.* at 294 (illustrating the poor elements of Minnie’s home life that may have led her to kill).

¹¹ *Id.* at 291 (emphasizing the deterioration of Minnie’s quality of life).

¹² *Id.* at 290 (indicating that Minnie kept her home in a state of disarray).

knot it?"¹³ To the county attorney and the sheriff, the women are wasting time on trifles.¹⁴ However, by considering the connection between the quilt and the specific method by which John Wright was killed, strangulation with a knotted rope, the women find relevant evidence that the men are too obtuse to see.¹⁵ The women notice that while most of Minnie's quilt had been carefully stitched, one piece looks "as if she didn't know what she was about!"¹⁶ Mrs. Hale then commits the first act of tampering when she repairs Minnie's jagged quilt piece.¹⁷

The women examine an empty birdcage, whose door has received rough treatment.¹⁸ When the women open Minnie's sewing basket they find a dead bird with a broken neck, carefully wrapped in silk in a pretty box, as if ready for burial.¹⁹ The women recall that as a young girl Minnie used to sing in the church choir. In recent years, she has lived without song and without joy, caged with a cold and incommunicative husband. Martha Hale comments "Wright wouldn't like the bird . . . a thing that sang. She used to sing. He killed that too."²⁰ Initially little more than strangers, Mrs. Peters and Mrs. Hale begin to bond with each other, recalling incidents in their own lives that lead them to empathize with Minnie. Mrs. Peters recalls her loneliness when she lost a child,²¹ and she also remembers her rage and desire to retaliate as a young girl when a boy brutally killed her kitten.²² Mrs. Hale expresses regret that she did nothing to ease Minnie's isolation; an occasional visit would have meant so much. For Mrs. Hale, acknowledging her neglect of the lonely housewife, the failure to visit Minnie stands as a "crime" that will go unpunished.²³ She then remarks that all women experience male brutality: "We all go through the same

¹³ *Id.* at 290.

¹⁴ *Id.* at 295 (describing the sheriff and county attorney's reaction to seeing the women's concern over the quilt work).

¹⁵ Angel, *supra* note 3, at 804-05 (discussing the similarities between the quilt stitching, the way in which John Wright was killed, and the way that the bird was killed).

¹⁶ GLASPELL, *supra* note 1, at 295 (implying that there is a relation between the way John Wright was killed and the reason for the mishaps in the quilt stitching).

¹⁷ *Id.* at 296 (describing Mrs. Hale removing the bad stitches and replacing them with good stitches as Mrs. Peters watches her).

¹⁸ *Id.* at 297 (recounting that when the women find the birdcage, they discover that the door to the cage is broken and the hinge is pulled apart).

¹⁹ *Id.* at 300 (noting the women's shock in finding the dead bird).

²⁰ *Id.* at 302.

²¹ *Id.* at 302-03 (recalling the stillness after her only child at the time died when she and her husband were homesteading in Dakota).

²² *Id.* at 301-02 (describing how she would have hurt the young boy had she not been held back).

²³ *Id.* at 303 (lamenting the fact that she had been neighbors with Minnie for twenty years and "had let her die for lack of life" by failing to help).

things—it's all just a different kind of the same thing!"²⁴

The women come to feel almost complicit in Minnie's crime: from that reaction, it is a small step to judging that Minnie should escape punishment. Returning to the kitchen and looking at the empty cage, the county attorney asks about the absence of the canary. Although well aware that the Wrights had no cat, Mrs. Hale mendaciously replies: "We think the cat got it."²⁵ By the time that the men have completed their examination of the house, the women have quietly decided to conceal the evidence they have uncovered. First, Mrs. Peters tries to stuff the dead canary in her handbag, but when it doesn't fit, Mrs. Hale conceals it in her coat pocket.²⁶ When, at the close of the story, the county attorney condescendingly asks the women whether they have decided how Minnie planned to end her quilt, Martha Hale responds that she was going to "knot it, Mr. Henderson."²⁷ The women's pun recalls not only the manner in which John Wright died but also the bond they have formed.²⁸ Definitely the men have *not* got it right about the death of John Wright.

Especially absent evidence of physical abuse, the women are concerned that an all-male jury might convict Mrs. Wright of murder if presented with "motive" evidence. Because of their empathy with Mrs. Wright's suffering, the women take three actions that will make it much less likely that Minnie will be convicted: re-knitting the quilt, concealing the dead bird, and suggesting that the cat got the canary.

Glaspell based "A Jury of Her Peers" on the 1901 trial of Margaret Hossack,²⁹ an Iowa farmwife who was convicted of the murder of her husband with a hatchet while he was asleep.³⁰ As a young reporter, Susan Glaspell covered the Hossack trial. The Hossacks had been married for thirty-three years and had five living children. Mr. Hossack was not only stern and narrow minded, but also abusive. Neighbors testified that for

²⁴ *Id.* at 303.

²⁵ *Id.* at 301.

²⁶ *Id.* at 306 ("Martha Hale snatched the box from the sheriff's wife, and got it in the pocket of her big coat just as the sheriff and the county attorney came back into the kitchen.").

²⁷ *Id.*

²⁸ See Elaine Hedges, *Small Things Reconsidered: Susan Glaspell's "A Jury of Her Peers,"* 12 WOMEN'S STUD. 89, 107 (1986) (describing the way that *A Jury of Her Peers* helped change the perception of women in the literary world).

²⁹ For thorough discussions of the Hossack trial, see Linda Ben-Zvi, *Murder, She Wrote: The Genesis of Susan Glaspell's Trifles*, 44 THEATRE J. 141 (1992); see also Patricia L. Bryan, *Stories in Fiction and Fact: Susan Glaspell's A Jury of Her Peers and the 1901 Murder Trial of Margaret Hossack*, 49 STAN. L. REV. 1293 (1997).

³⁰ In 1916, Glaspell published the play "Trifles." SUSAN GLASPELL, *Trifles*, in LIFTED MASKS AND OTHER WORKS, *supra* note 1, at 259. This play was also based on the Hossack trial and is a dramatization of *A Jury of Her Peers*. See Ben-Zvi, *supra* note 29, at 143.

years prior to the tragedy, Mrs. Hossack had told them of her husband's violent rage and his repeated threats to kill his family.³¹ On Thanksgiving Day 1899, one year before the killing and in fear of violence, Mrs. Hossack left to live with a married daughter. With the help of neighbors the couple reconciled, but a witness testified that shortly after the reconciliation, the wife wept and said that her husband was as violent as ever.³² At her trial, Mrs. Hossack persistently denied that she was the victim of physical abuse, as did her children: this apparent paradox is explained by the state of the murder law at the turn of the century. Mrs. Hossack likely would have been found guilty of first-degree premeditated murder if the jury found that she had a motive to kill her husband out of concern for her own safety or that of her children. Although the trial court convicted Mrs. Hossack, the Iowa Supreme Court reversed on a technical basis unrelated to domestic abuse or motive - improperly introduced evidence.³³ The retrial of Mrs. Hossack resulted in a hung jury. The prosecution decided not to try Mrs. Hossack another time, noting that she had become quite ill and that community sentiment was against a re-trial.³⁴

While Mrs. Hossack downplayed evidence of abuse to avoid providing motive, her counterpart today would likely present a "battered woman's defense." Under the Model Penal Code, self-defense applies to use of deadly force "when [the] actor believes that such force is immediately necessary to protect himself against the use of unlawful force by such other person on the present occasion."³⁵ The battered woman's claim of self-defense is likely to be recognized in the case of confrontational homicide, and no retreat is required within the home.³⁶ However, the courts remain divided on the applicability of self-defense to the scenario where the abuser

³¹ Bryan, *supra* note 29, at 1317-19 (describing John Hossack's longstanding reputation for violence).

³² *Id.* at 1323 ("Mrs. Hossack had said that things were just as bad as they had ever been [after their reconciliation] and that her situation at home would never improve as long as her husband was alive reconciled.").

³³ *State v. Hossack*, 89 N.W. 1077, 1080 (Iowa 1902) (holding that the hairs found on the ax, which was thought to be the murder weapon, were improperly introduced against defendant).

³⁴ Bryan, *supra* note 29, at 1355-56 (remarking that the county attorney dismissed the case because he thought it was impossible to get a conviction, rather than because of his belief in Mrs. Hossack's innocence).

³⁵ MODEL PENAL CODE § 3.04(1) (2002).

³⁶ *Id.* at § 3.04(2)(b)(ii)(A).

Use of deadly force is not justifiable unless actor believes that such force is necessary to protect himself against death, serious bodily harm, kidnapping or rape; nor is it justifiable if the actor knows that he can avoid necessity of using such force with complete safety by retreating . . . except that the actor is not obliged to retreat from his dwelling or work place.

Id.

is killed during his sleep, the scenario in the Hossack case.³⁷ Even if a battered woman does not succeed in showing self defense, a victim of domestic violence today is unlikely to be convicted of premeditated murder: murder is reduced to the lesser offense of manslaughter when “committed under influence of extreme mental or emotional disturbance for which there is reasonable explanation or excuse.”³⁸

Susan Glaspell significantly departed from the Hossack murder when she created her fictional narrative: there is no evidence that Mr. Wright was physically abusive. Rather he is cold and tight-fisted. As Mrs. Hale notes, “[t]hey say he was a good man.”³⁹ Mrs. Hale acknowledges that John Wright “didn’t drink, and kept his word as well as most, I guess, and paid his debts. But he was a hard man . . .”⁴⁰ An encounter with John Wright resembled a “raw wind that gets to the bone.”⁴¹ While Minnie Wright may have led a life of quiet desperation, there is no indication that she was in physical danger, even assuming that her husband brutally killed the greatest joy in her life, her companion songbird. It is important to keep in mind this salient contrast between the fictional story and the Hossack case as we evaluate the decision by Mrs. Peters and Mrs. Hale to suppress evidence that would have supplied a motive for the murder.

II. CRITICAL REACTION TO THE SELF-HELP ACTIONS TAKEN BY MRS. PETERS AND MRS. HALE

There has been near universal approval of the actions taken by Mrs. Peters and Mrs. Hale. Feminist scholars invariably praise them for their perception and solidarity. Their actions have been excused given the historical context, where Minnie could not have obtained a fair trial because women were not allowed to sit on a jury. Their actions have also been portrayed as the fictional equivalent of “jury nullification,” a morally justified refusal to convict notwithstanding evidence of guilt.

³⁷ Compare *State v. Norman*, 378 S.E.2d 8, 9 (N.C. 1989) (finding no self-defense when the defendant shot her husband while he was sleeping), with *State v. Gallegos*, 719 P.2d 1268, 1270 (N.M. Ct. App. 1986) (holding that the “trial court erred in refusing to tender to the jury defendant’s self-defense instruction” when defendant raised the battered wife syndrome as the basis for her self defense and killed her husband while he was lying in bed), and *State v. Leidholm*, 334 N.W.2d 811, 818 (N.D. 1983) (“[I]f a person reasonably believes self-defense is necessary, his conduct is excused or justified.”).

³⁸ MODEL PENAL CODE § 210.3(1)(b).

³⁹ GLASPELL, *supra* note 30, at 272.

⁴⁰ *Id.*

⁴¹ *Id.*

Marina Angel compares Glaspell's play *Trifles*⁴² to *Lysistrata*. She points out that while the heroine's name is usually translated as "Disbander of the Armies," the literal translation is "Unraveler of Armies." In Aristophanes' play, resourceful women liken the task of "finding a solution to the issues that caused the war to unraveling wool and then weaving together disparate elements to form a strong and peaceful state."⁴³ Like Aristophanes' women, Mrs. Peters and Mrs. Hale use their knowledge of women's arts not only to outmaneuver the men, but also to solve an otherwise intractable problem.⁴⁴

Marijane Camilleri argues that by virtue of her oppressive marriage, Minnie Foster "was as lifeless as her husband, metaphorically murdered by her husband in the act of killing her bird, and existentially self-excommunicated from human fellowship."⁴⁵ Minnie's joyful nature and innate gifts had withered under years of oppression: it is not a surprise that violence is provoked. Once again, the actions of the women are not condemned.

In her review of developments in feminist scholarship, Orit Kamir suggests that Glaspell anticipates "[t]he search for feminist consciousness and the foundation of an informed community of women"⁴⁶ Glaspell's story "anticipates both legal feminist theory that focuses on dominance, oppression, and resistance, and psychological feminist theory that focuses on an ethics of care, women's voice, and feminine networking."⁴⁷

Feminist critics' approval of the self-help actions taken by the two women in part reflects disapproval of a legal system that excluded women not only from service as jurors, but also as judges or legislators.⁴⁸

⁴² GLASPELL, *supra* note 30, at 259.

⁴³ Angel, *supra* note 3, at 835.

⁴⁴ See generally Sandra Benlevy, *Venus and Mars in the Jury Deliberation Room: Exploring the Differences that Exist Among Male and Female Jurors During the Deliberation Process*, 9 S. CAL. REV. L. & WOMEN'S STUD. 445 (2000) (discussing the history of women's exclusion from juries and potential gender differences in the jury deliberation process); Roberta K. Flowers, *Does It Cost Too Much? A 'Difference' Look at J.E.B. v. Alabama*, 64 FORDHAM L. REV. 491 (1995) (summarizing empirical work on women's participation in juries).

⁴⁵ Marijane Camilleri, Comment, *Lessons in Law from Literature: A Look at the Movement and a Peer at Her Jury*, 39 CATH. U. L. REV. 557, 586-87 (1990).

⁴⁶ Orit Kamir, *To Kill a Songbird: A Community of Women, Feminist Jurisprudence, Conscientious Objection and Revolution in A Jury of Her Peers and Contemporary Film*, 19 CARDOZO STUD. L. & LITERATURE 357, 357 (2007).

⁴⁷ *Id.*

⁴⁸ A trilogy of U. S. Supreme Court decisions has addressed the exclusion of women from jury service in the federal system. The first is *Ballard v. United States*, 329 U.S. 187 (1946). There, the Court rejected the argument that women could be excluded from the jury pool because men could represent them. *Id.* at 193. Justice Douglas observed: "[I]f the shoe were on the other foot, who would claim that a jury was truly representative of the community if all men were intentionally and systematically excluded from the panel?" *Id.*

Moreover, in the actual trial on which the play is based, Mrs. Hossack and her children sought to conceal evidence of Mr. Hossack's abuse, as that would provide a motive for the murder. In justifying the actions of Mrs. Hale and Mrs. Peters, the critics reflect that a legal system is entirely dysfunctional if evidence that a wife who kills her husband has been abused must be suppressed. According to Robin West, "[i]n a system so blatantly skewed, it was inevitable" that Mrs. Peters and Mrs. Hale, like Mrs. Hossack, "would and did hide evidence" of the husband's abuse.⁴⁹ However, in Glaspell's story there is no evidence that Minnie was *physically* abused, although she may be the victim of emotional cruelty.

Apart from approval of the women's solidarity and their pro-active response to an unfair system, the critics deeply sympathize with Minnie's suffering, and the toll taken by the silence that her marriage has enforced. As Robin West writes:

The childless, friendless, isolated farmwife who committed the homicide had lived in a silent and emotionally dead world with a noncommunicative and abusive husband, and she responded to her silent hell with a crime of silence—strangling her husband in the middle of his sleep. The wives who visit the farmhouse after the homicide fault themselves for their neglect of their neighbor's silent suffering. And all of this action takes place, of course, against the backdrop of a legal system which itself silences, by excluding, the views, perspectives, and voices of women from juries in properly constituted courts of law.⁵⁰

Elizabeth Gemmette identifies seven silences in the story: the silencing

The second is *Taylor v. Louisiana*, 419 U.S. 522 (1975). There, the Court declared unconstitutional a Louisiana statute that allowed a woman to serve on a jury only if she filed a declaration of her desire to serve. *Id.* at 533. Under this "opt-in" approach, only 10% of jurors were women. *Id.* at 524. The Court recognized that systematic exclusion of women was inconsistent with constitutional requirements that juries be representative of a cross-section of the community, in conflict with democratic principles of participation, and undermined faith in the jury system. *Id.* at 529–30. A state could allow a hardship excuse as justified by a particular juror's specific circumstances, for example a woman with childcare obligations. *Id.* at 534–35.

The last of the trilogy is *J. E. B. v. Alabama ex rel. T. B.*, 511 U.S. 127, 146 (1994). This was a paternity suit, in which the Court ruled that exercise of peremptory challenges based solely on a juror's gender is unconstitutional. *Id.* at 146. The Court again emphasized the evils of denying full participation by women on jury panels: litigants must be judged by a jury of their peers; it is wrong to deny women full participation in the political process; community confidence in the judicial system is undermined if it is perceived that the system is discriminatory. *Id.* at 140. In a concurring opinion, Justice Sandra Day O'Connor expressed concern about the implications of the decision for the abused woman: asking if such a defendant would be precluded "from using her peremptory challenges to ensure that the jury of her peers contains as many women members as possible." *Id.* at 151.

⁴⁹ Robin West, *Invisible Victims: A Comparison of Susan Glaspell's Jury of Her Peers, and Herman Melville's Bartleby the Scrivener*, 8 CARDOZO STUD. L. & LITERATURE 203, 237 (1996).

⁵⁰ ROBIN WEST, *CARING FOR JUSTICE* 199 (1997).

of Minnie; the silencing of her canary; Minnie's silencing of her husband by strangling him; the burial of the dead bird whom Mrs. Peters and Mrs. Hale realize could have "spoken" after his death; the suppression of other evidence that could have convicted Minnie; the unanswered question about what happened on the night of John Wright's death.⁵¹ Again, she does not reprove the conduct of the women in tampering with the evidence.

For these critics, it is poetic justice that a mean-spirited man like John Wright, who has silenced his wife's only comfort by breaking her canary's neck, would himself suffer the silent crime of strangulation. Many readers instinctively relish an outcome in which clever women pull the wool over the eyes of the condescending sheriff and prosecutor, who get their just desserts. Notwithstanding this consensus, I question these conclusions.

III. WHAT'S WRONG WITH THE ACTIONS TAKEN BY MRS. PETERS AND MRS. HALE?

The actions taken by Mrs. Hale and Mrs. Peters are problematic and today would be illegal. By reducing the prospects for successful prosecution, they have condoned the use of force that may have been excessive; by suppressing evidence, they have subverted the opportunity for a full or fair trial.

To evaluate the morality of the women's action, assume that by concealing the body of the canary, they secured the release or acquittal of Minnie Wright. Unlike the Hossack case where the husband was violently abusive, the most that we know for sure about Mr. Wright is that he was cold, close-fisted, and taciturn. Even assuming that he was guilty of mental cruelty, what kind of precedent do we set if we allow every spouse who believes that his or her partner has been guilty of mental cruelty—probably a large percentage of marriages—to strangle their spouse? What if a friendless man is bullied and browbeaten by an emotionally abusive wife? Is he justified in strangling her if she destroys his only consolation by breaking the television or giving away his dog? What if John Wright snapped the bird's neck in a fit of despondency, when he had just received bad news that sent him over the edge? The one-sided reading of the text in which the reader applauds actions likely to negate Minnie's conviction fails to consider the implications: if murder motivated by a spouse's mental cruelty goes unpunished, such an outcome could *increase* domestic

⁵¹ Elizabeth Villiers Gemmette, *Filling in the Silence: Domestic Violence, Literature and Law*, 32 LOY. U. CHI. L.J. 91, 95–96 (2000) (identifying and describing the silences within the story).

violence.

The second problem posed by the women's conduct is that they have rushed to judgment without the benefit of a full trial that would have provided much-needed rich detail about the actual facts of the relationship between Minnie and John Wright. Do Mrs. Peters and Mrs. Hale have sufficient knowledge of what occurred within the Wright household to make the judgment that Minnie should be released into the community? Domestic abuse can be a two-way street: do the women know enough to be confident that Minnie is an entirely innocent victim? In applauding the suppression of the evidence of the killing of the canary, the critics fail to consider an important passage that should cast some doubt on Minnie's behavior, and perhaps even her sanity. Hale reports that Minnie behaved "queer" when he entered the room where her husband's body lay, and laughed strangely.⁵² She was not a bit excited as she pointed to her dead husband.⁵³ Does Minnie's odd demeanor reflect a cold-blooded killer's satisfaction, or alternatively suggest diminished mental capacity or even insanity? Without the evidence of the canary, it will be more difficult to unlock the mystery of Minnie's state of mind: Minnie's trial will be perfunctory, if indeed the prosecution decides to proceed at all.

Destruction of evidence carries with it three evils: it negates the search for truth, the goal of the adversarial process and the purpose of trial; it is unfair to the other party (or parties); it undermines the legitimacy of the judicial system by casting doubt on the rightness of the verdict and the integrity of the court process.⁵⁴ The search for truth is one that affects not only the family of the Wrights and the neighbors, but the larger community that has an interest in a full and impartial trial. Because of the evidence that was destroyed, the community will never know whether the killing was justified in the sense that Minnie had a legitimate fear of violence from her husband, whether she suffered severe emotional abuse or mild marital disagreement, or whether on the contrary she was an abusive partner.

Since the time of the Bible, obstruction of justice has been condemned on moral grounds.⁵⁵ As early as 1831, Congress passed a statute making it a violation of federal law to obstruct justice by destroying evidence⁵⁶— the

⁵² GLASPELL, *supra* note 1, at 284 (describing Minnie's behavior).

⁵³ *Id.* "She just nodded her head, not getting a bit excited, but rockin' back and forth." *Id.*

⁵⁴ JAMIE S. GORELICK ET AL., DESTRUCTION OF EVIDENCE § 1.10–1.13 (1995) (explaining the policy reasons behind the prohibition on the destruction of evidence).

⁵⁵ See *Deuteronomy* 19:14 (prohibiting the removal of landmarks on boundary markers).

⁵⁶ Act of Mar. 2, 1831, § 1, 4 Stat. 487, 487–88 (1831) (criminalizing the destruction of evidence that is involved in a judicial proceeding).

progenitor of today's federal Obstruction of Justice Omnibus Clause, which prohibits concealment, alteration, and destruction of subpoenaed documents.⁵⁷ The women's action in altering the quilt and suppressing the dead bird falls within the four corners of conduct proscribed under state statutes that prohibit obstruction of justice. For example, under Iowa's criminal law:

A person who, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, knowingly does any of the following acts, commits an aggravated misdemeanor:

1. Destroys, alters, conceals, or disguises physical evidence which would be admissible in the trial of another for a public offense, or makes available false evidence or furnishes false information with the intent that it be used in the trial of that case.⁵⁸

Whether or not Mrs. Peters and Mrs. Hale could have been convicted of obstruction in an Iowa State court in 1917 when the story was written, the morality of their decision to tamper with physical evidence must be considered. Moreover, the women's statement that the cat ate the canary would likely qualify as the provision of false information.⁵⁹

Destruction of evidence remains a priority concern,⁶⁰ as reflected in the

⁵⁷ 18 U.S.C. § 1503 (2008) (prohibiting any endeavor that seeks to "influence, obstruct, or impede, the due administration of justice"); see *United States v. Ruggiero*, 934 F.2d 440, 446 (2d Cir. 1991) (explaining that 18 U.S.C. § 1503 prohibits the endeavor to impede justice, regardless of the endeavor's success); see also *United States v. Banks*, 942 F.2d 1576, 1578 (11th Cir. 1991) ("It is clear that the knowing destruction or concealment of documentary evidence can constitute a violation of § 1503.").

⁵⁸ IOWA CODE ANN. § 719.3(1) (West 2008).

⁵⁹ The majority rule is that false statements to police officers standing alone do not qualify as "obstruction." See John F. Decker, *The Varying Parameters of Obstruction of Justice in American Criminal Law*, 65 LA. L. REV. 49, 114-15 (2004). "[M]ost courts have also held that unsworn false statements to law enforcement officials are not punishable under the broad obstruction offenses." *Id.* See also *People v. Gaissert*, 348 N.Y.S. 2d 82, 84 (County Ct. 1973). The *Gaissert* court declared that "[i]t does not constitute the making of an apparently sworn false statement unless the statement is both written or sworn to." *Id.* See also *State v. Huron*, 591 N.E.2d 352, 353 (Ohio Ct. App. 1950). There, the court stated: "we are obliged . . . to hold that the mere making of a false, unsworn statement to a police officer may not be the basis for finding a violation of the ordinance." *Id.* However, given the wording of the Iowa code and the fact that the women gave misleading information about the cat in association with two acts of tampering, a good argument could be made that they engaged in three counts of obstruction.

⁶⁰ A related doctrine, spoliation, addresses destruction of evidence by allowing adverse inferences to be drawn against a spoliating party who destroys potentially relevant evidence. The theory is that the evidence destroyed would have exposed facts unfavorable to the spoliating party. See Margaret A. Egan, Note, *Spoliators Beware, but Fear Not an Independent Civil Suit*, 24 U. ARK. LITTLE ROCK L. REV. 233, 236 (2001). "Spoliation includes the destruction, concealment, or alteration of evidence, proof of which may weigh against the party responsible." *Id.* See also Steffen Nolte, *The Spoliation Tort: An Approach to Underlying Principles*, 26 ST. MARY'S L.J. 351, 353-54 (1994). Spoliation constitutes a serious threat to the administration of justice. "Destruction or spoliation of evidence in civil litigation has undermined the integrity of the adversary system, thus raising serious public policy

well-publicized litigation involving massive destruction of Enron-related documents by Arthur Andersen,⁶¹ and Congress's recent enactment of additional sanctions for destruction of documents as part of the Sarbanes-Oxley legislation.⁶² One survey reports that half of litigating lawyers report that spoliation remains an important concern.⁶³

Can we justify the decisions that the women took to conceal evidence on the basis that the criminal code is fundamentally unjust, or that the trial process was unfair in that no woman was allowed to serve on a jury in Minnie Wright's trial? Clearly the actions taken by the women do not qualify as an act of civil disobedience, a conscious decision to openly disobey an unjust law. First, it is untenable to argue that the law against murder is unjust. Second, while one could well argue that early twentieth-century criminal codes were unjust in their failure to consider the special case of physically battered women like Mrs. Hossack, there is no textual evidence that John Wright physically abused his wife. At most, John Wright broke the canary's neck. Third, the civil disobedient aims to repeal or reform the unjust law, here, the women undermine the application of the law to exonerate a single defendant whom they believe should not be punished. Finally, the actions that Mrs. Peters and Mrs. Hale took do not qualify as appropriate instances of civil disobedience in which a person openly and deliberately violates a law, willingly accepting punishment.⁶⁴

The morality of the actions taken by Mrs. Peters and Mrs. Hale can be

concerns." *Id.* A few states allow independent tort remedies for spoliation. The courts in Iowa do not allow an independent tort remedy, on the theory that discovery sanctions, allowing adverse inferences against a party who has destroyed evidence, and other remedies already exist. *See, e.g.,* *Meyn v. State*, 594 N.W.2d 31, 34 (Iowa 1999). "Iowa remedies for spoliation of evidence include discretionary sanctions, barring duplicate evidence where fraud or intentional destruction is indicated and instructing on an unfavorable inference to be drawn from the fact that evidence was destroyed." *Id.* The *Meyn* court further held: "[w]e decline to adopt the negligent spoliation of evidence theory urged by plaintiff as a separate tort cause of action." *Id.*

⁶¹ *Arthur Andersen LLP v. United States*, 544 U.S. 696, 708 (2005). While the accounting firm was convicted at the trial court level, the Supreme Court ultimately reversed the conviction. *Id.* By the time the conviction was reversed, Arthur Andersen had collapsed.

⁶² 18 U.S.C. § 1519 (2008). Section 802 of the Sarbanes-Oxley Act of 2002 imposes criminal penalties for knowingly altering, destroying, concealing, or falsifying any record or document "with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11 [bankruptcy cases], or in relation to or contemplation of any such matter or case" *Id.*

⁶³ *See* Terry R. Spencer, *Do Not Fold Spindle or Mutilate: The Trend Towards Recognition of Spoliation as a Separate Tort*, 30 IDAHO L. REV. 37, 38-39 (1993). "[C]laims of spoliation tend to permeate the prosecution of civil matters. One survey . . . concluded that 50% of all litigators found spoliation to be either a frequent or regular problem." *Id.*

⁶⁴ *See* MARTIN LUTHER KING, JR., *Letter from Birmingham Jail*, in *WHY WE CAN'T WAIT* 77, 86 (1963). In defining civil disobedience, Dr. King states: "One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty." *Id.* Furthermore, an act of civil disobedience not only implies reverence for the law and a willing acceptance of punishment, but the disobedience does not occur until other means of protest have been exhausted. *Id.*

evaluated in the context of the controversial—and inherently subversive—doctrine of jury nullification.⁶⁵ Nullification occurs when a jury, based on its own sense of justice or fairness, acquits a defendant even though they believe the defendant guilty of the offense charged beyond a reasonable doubt.⁶⁶ This doctrine exceptionally allows jurors to disregard the law and the oaths that they take to uphold the law in order to do justice. Nullification can occur either when jurors disapprove of a law (e.g., criminalizing drug possession), or when they believe it to be unjustly applied to a particular individual.⁶⁷ The doctrine of jury nullification is long-lived and was famously applied to avoid convicting the publisher John Zegner for publication of seditious libel in 1735. In *United States v. Dougherty*,⁶⁸ anti-Vietnam war protestors were convicted of breaking and entering into the Washington offices of the Dow Chemical Company, the manufacturer of napalm.⁶⁹ On appeal, “The D.C. Nine” argued that the trial judge wrongfully refused to instruct the jury on the possibility of nullification. Writing for the majority, Judge Leventhal rejected the appellants’ argument that a jury instruction on nullification should have been given.⁷⁰ An instruction concerning nullification would invite jury lawlessness, an anarchy in which each individual would decide with impunity when the law should be applied and when it should be disregarded.⁷¹ In dissent, Judge Bazelon argued in favor of allowing the

⁶⁵ See, e.g., Robert P. Lawry, *The Moral Obligation of the Juror to the Law*, 112 PENN. ST. L. REV. 137 (2007) (defining jury nullification “to mean the power of the jury to disregard the judge’s instructions on the law, refuse to apply those instructions to the facts at hand or event to deliberately find as fact that which the jurors themselves do not believe to have occurred, simply in order to acquit a criminal defendant”).

⁶⁶ See Andrew D. Leipold, *Rethinking Jury Nullification*, 82 VA. L. REV. 253, 253–54 (1996).

Nullification occurs when the defendant’s guilt is clear beyond a reasonable doubt, but the jury, based on its own sense of fairness, decides to acquit. The nullification doctrine recognizes this power to “acquit the evidence,” even though when a jury nullifies, it ignores the judge’s legal instructions and vetoes a legislative definition of culpable conduct.

Id.

⁶⁷ See, e.g., Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. 677, 678 (1995). Examples can range from a refusal to convict for possession of marijuana for medicinal purposes, to a District of Columbia jury’s acquittal of Mayor Barry, who was videotaped by police smoking cocaine. *Id.* In fact, “[s]ome black prosecutors wanted their office to lose its case [against Barry] because they believed that the prosecution of Barry was racist.” *Id.*

⁶⁸ 473 F.2d 1113 (1973).

⁶⁹ *Id.* at 1116–17.

⁷⁰ *Id.* at 1117. The conviction was reversed on other grounds: denial of the defendant’s right to *pro se* representation. *Id.*

⁷¹ *Id.* at 1130. The court stated that “the *pro se* right should not be understood as embracing the principle of ‘nullification’ proffered by the applicants. They say that the jury has a well-recognized prerogative to disregard the instructions of the court even as to matters of law . . .” *Id.*

jury to learn about the nullification option.⁷²

Given the title and the tenor of Glaspell's story, it is a useful first step to analogize the actions taken by Mrs. Peters and Mrs. Hale to jury nullification, but I believe that this is an inappropriate tool to evaluate their actions. Granted, the two women provided a putative jury of Minnie Wright's peers at a time when a woman defendant was denied a jury of her female peers. However, neither Mrs. Peters nor Mrs. Hale sat as jurors do in a formal trial, where they would hear all the acts and evidence about the Wrights' marriage and the circumstances of his death before they reach a verdict. Rather the two women's actions foreclose a jury, albeit an all-male jury, from the opportunity to consider the evidence and then make an informed decision to acquit, convict, or even to be unable to decide. Even an all-male jury might not have convicted; the county attorney recognizes jurors' sympathy for women defendants when he explains that he needs to search for evidence of motive.⁷³ Recall that the real-life result of the second trial of Mrs. Hossack was a hung jury. Even if the actions taken by Mrs. Peters and Mrs. Hale are analogized to jury nullification, the rightness of the action is questionable.

The gender sympathy that motivated Mrs. Peters and Mrs. Hale to conceal evidence against a female defendant is a dangerous precedent: imagine alternative scenarios in which biased juries resort to nullification to avoid convicting a white man accused of killing black people or to avoid convicting a straight defendant accused of killing a gay man. As a protest against an unjust legal system, Paul Butler not only advocates that African-American jurors should consider nullification when blacks are charged with nonviolent *malum in se* crimes, but also advocates a presumption of nullification for victimless crimes like possession of crack cocaine.⁷⁴ It is

⁷² *Id.* at 1139 (Bazelon, C.J., dissenting). Unlike the majority, Chief Judge Bazelon argues that a jury's power of nullification is undeniable, necessary, and in some instances beneficial to the normalization of applying the rule of law. *Id.*

⁷³ GLASPELL, *supra* note 1, at 304. The county attorney insists on finding a motive for the crime because: "[Y]ou know juries when it comes to women." *Id.*

⁷⁴ Butler, *supra* note 67, at 715. Butler advocates:

In cases involving violent *malum in se* crimes like murder, rape, and assault, jurors should consider the case strictly on the evidence presented, and, if they have no reasonable doubt that the defendant is guilty, they should convict. For nonviolent *malum in se* crimes such as theft or perjury, nullification is an option that the juror should consider, although there should be no presumption in favor of it. A juror might vote for acquittal, for example, when a poor woman steals from Tiffany's, but not when the same woman steals from her next-door neighbor. Finally, in cases involving nonviolent, *malum prohibitum* offenses, including "victimless" crimes like narcotics offenses, there should be a presumption in favor of nullification.

Id. (emphasis added).

questionable whether most African Americans would support these proposals, especially when so many victims of nonviolent crimes and of drug addiction are themselves African Americans. Although Robert Lawry argues that while nullification "is ill-suited to redress large social and political injustices,"⁷⁵ it may be justified in specific cases such as the trial of Minnie Wright and, therefore, he does not criticize the decision by Mrs. Peters and Mrs. Hale to suppress the evidence they have uncovered.⁷⁶ I cannot agree with Lawry's conclusion. It is one thing to apply jury nullification to the analysis of whether to acquit those who commit protest crimes (such as the Dow break-in) and quite another to apply the doctrine to prevent or distort a trial for murder. Those who approve the actions taken by Mrs. Peters and Mrs. Hale go beyond Butler's proposal, which limits nullification to defendants who have committed nonviolent crimes, while in Minnie's case she has strangled her husband. In the modern jury system, jury nullification is especially problematic: potential jurors in the *voir-dire* process are generally asked if there is any personal experience, strongly-held conviction or other reason that they could not apply the law per the judge's instructions and render a fair verdict.⁷⁷

By taking the law into their own hands, the women have assumed roles that our political system assigns to judges, juries, legislators or prosecutors. The states differ in their attitudes towards an abused woman's "non-confrontational" killing of her spouse, as when a woman kills her sleeping spouse. Mrs. Peters and Mrs. Hale engaged in their own law-making in tampering with evidence that likely would have led to Minnie's conviction. The actions that the women took also usurped the role of prosecutors and thwarted the exercise of prosecutorial discretion. In the historical case of *State v. Hossack*, the prosecution declined to subject Mrs. Hossack to a third trial after her second trial ended in a hung jury, noting the cost of retrial, the uncertainty of conviction, her age and feeble condition.⁷⁸

⁷⁵ Lawry, *supra* note 65, at 172.

⁷⁶ *Id.* at 152-53. The imagined trial of Minnie Wright is "a case where jury nullification at least might be expected. Mrs. Wright poses no further threat to society. She was a broken woman, not likely to mend; and her husband was responsible for her brokenness . . . [T]he conscience of the community could say: 'Let her go. She has suffered enough.'" *Id.*

⁷⁷ See, e.g., Leipold, *supra* note 66, at 300. Opponents of jury nullification point out that liberal nullification instructions could diminish political pressures on state legislatures to repeal unjust and unpopular laws because frequent nullification cancels out unpopular laws. *Id.* With the unpopular law effectively cancelled out, there are few, if any, convictions under the law. *Id.* Few convictions will not draw public attention to the unjust law, and without drawing public attention, the public will not pressure the legislature to repeal the law. *Id.*

⁷⁸ Bryan, *supra* note 29, at 1355-56. The county attorney that was to retry Mrs. Hossack strongly requested that the case be dismissed, "citing the lack of new evidence, the difficulty and cost of getting witnesses to testify yet another time, the publicity surrounding the two earlier trials and the 'advanced

Jury invites us to consider the question whether destruction of evidence is morally justified as an action of protest in lieu of pursuing slow, sometimes painfully slow avenues of social protest and political lobbying. Although women are no longer excluded from juries, the moral relevance of these questions remains. Glaspell's story raises important questions of silent victims in domestic abuse and the role of women in the legal system. We need to consider when, if ever, it is appropriate to take the law into one's hands, to obstruct justice, to destroy evidence in support of what a litigant or the litigant's friends or associates perceive as a higher good.

IV. WHY HAVE THE CRITICS WHITEWASHED THE ACTIONS TAKEN BY MRS. PETERS AND MRS. HALE?

Glaspell's story sends a strong message about the suffering of emotionally abused women and the unfairness of the prevailing legal system that excluded women from jury service. This message resonates with three major schools of feminist jurisprudence. Advocates of "equal treatment feminism" applaud a story that targets an outrageously biased legal system that well into the 1940s excluded women from service on state juries. Advocates of "cultural feminism," in particular those who have emphasized gender differences and the emphasis on feminine values such as caring, applaud the perception and sympathy shown by Mrs. Peters and Mrs. Hale. In the cultural feminist reading, the actions taken by the women in bonding together to protect Minnie Wright represent a pro-active, caring action. Advocates of "dominance feminism" who investigate and condemn oppressive treatment of women will approve actions likely to exonerate Minnie, who is the victim of a brutalizing marriage and of an unjust patriarchal system.

I suggest that these natural sympathies with the plight of Minnie Wright and the actions taken by Mrs. Peters and Mrs. Hale must confront the fact that destruction of evidence is a tort, a crime, and a moral wrong. We must question the morality of the women's destruction of evidence even though we empathize with Minnie Wright's suffering, feel outrage at the unfair judicial system and root for Minnie Wright's acquittal.⁷⁹

years and enfeebled condition and appearance,' of Mrs. Hossack." *Id.*

⁷⁹ Canonical statements of liberal, cultural, and dominant feminist work include Ruth Bader Ginsburg, *Sex, Equality and the Constitution*, 52 TUL. L. REV. 451, 451 (1978), which notes that until the 1970's, the Supreme Court consistently affirmed government authority to classify by sex. They also include CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT 2 (1982), which states that differences between males and females arise in a social context where social status, power and reproductive biology combine to shape the experience and

The feminist critics are right that a primary message of the text is to convey the silent scream of women who suffer lives of abuse. For leading cultural feminists such as Robin West, legal judgments should incorporate empathy and care; traditional institutions have suppressed and even made invisible the pain experienced by women in the position of the real-life Margaret Hossack and the fictional Minnie Wright. West insists on the role of law and literature in communicating the "serious but invisible injury" suffered by women such as Mrs. Hossack and Minnie Wright.⁸⁰ The legal and political system surely benefits from hearing the pain of battered women. A related and equally important message of this text is the need for the active participation of women in the judicial system and other public discourse. However, I believe that it devalues Glaspell's achievement to ignore the more complex and ambiguous questions that her story raises, including the questions of the morality of destroying evidence.

A one-sided reading of *Jury* is problematic not only to the extent that it condones a crime, suppression of evidence, but also because it rivets the reader's attention to the single narrative of Minnie Wright's suffering. Robin West has movingly emphasized the importance of narrative towards communicating the experiences and pain of women and other disempowered groups:

[N]arrativity . . . is a necessary part of moral claims for change made on behalf of those who have traditionally been excluded from the processes of law. If our moral convictions are grounded in conceptions of our shared nature that are in turn informed by our own experiences and the experiences of others, and if some experiences are routinely silenced by empowered groups and our moral convictions consequently skewed, then the imbalance must be corrected by the telling in narrative form of the heretofore silenced experiences.⁸¹

Jury is an example of the contributions of "outsider literature," texts that "enable[] us forcefully toward an examination of those lives, as much as

relationships between the two genders. Further, Catherine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 SIGNS: J. WOMEN CULTURE & SOC. 515, 516 (1983), compares feminism and Marxism as theories of power and distribution while at the same time she provides accounts of how social arrangements of patterned disparity can be internally rational yet unjust. For a recent review of the leading theories, see Rosalind Dixon, *Feminist Disagreement (Comparatively) Recast*, 31 HARV. J. L. & GENDER 277 (2008), where Dixon explains the insights of more recent feminist theories in ways that connect them to the insights of older feminist theories.

⁸⁰ West, *supra* note 49, at 204. West explains that the Melville and Glaspell novellas not only seek to articulate and give voice to the victims of "invisible harms," but they also directly concern the process of legitimization. *Id.* at 204.

⁸¹ ROBIN WEST, NARRATIVE, AUTHORITY AND LAW 10 (1993).

possible unfiltered by the disorienting gauze of the dominant culture's defining texts"⁸²

What about John Wright's narrative? Of what does John Wright stand accused? He was sober, but taciturn and close-fisted. The fact that he has not provided his wife with new clothes, a phone or working stove may reflect gross insensitivity to her loneliness or even deliberate infliction of cruelty. On the other hand, maybe John is simply dirt poor. The feminist critics read Minnie as the only outsider, as if John were an empowered member of his community. His story goes untold.

While the first-blush feminist reading invites us to see Minnie as the victim in lieu of the murdered man, John Wright, Minnie is not the only victim. It is possible that John Wright had a family that grieves for his absence and would like to know the truth about his murder. We can read *Billy Budd* as a dual victim novella in which the innocent, mute and abused sailor Billy ends up as a murderer, killing his abuser Claggart because he had no other recourse;⁸³ similarly, we can read *Jury* as a dual victim story in which the innocent, mute and abused housewife Minnie ends up killing her abuser John because she had no other recourse. Just as Captain Vere's judgment to summarily execute Billy is complex and has been the subject of considerable debate condemning and exonerating the Captain, so too the summary decision by Mrs. Peters and Mrs. Hale to destroy evidence likely to convict Minnie is subject to a variety of judgments and responses. This article is intended to encourage the full, rich reading that Glaspell's miniature masterpiece offers.

⁸² Robin L. West, *The Literary Lawyer*, 27 PAC. L.J. 1187, 1211 (1996).

⁸³ See, e.g., BARBARA JOHNSON, *THE CRITICAL DIFFERENCE: ESSAYS IN THE CONTEMPORARY RHETORIC OF READING* 102–03 (1992) (stating that “it is judging, not murdering, that Melville is asking the readers to judge” in *Billy Budd*).

